

Department of Veterans Affairs

§ 21.42

(7) *Vocational rehabilitation counselor.* Unless otherwise stated, the term vocational rehabilitation counselor refers to a vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division in the Veterans Benefits Administration, Department of Veterans Affairs.

(Authority: 38 U.S.C. 3118(c))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 53 FR 50956, Dec. 19, 1988; 62 FR 17707, Apr. 11, 1997]

BASIC ENTITLEMENT

§ 21.40 Basic entitlement.

A veteran or serviceperson shall be entitled to a program of rehabilitation services under 38 U.S.C. chapter 31 if all of the following conditions are met:

(a) *Service-connected disability.* (1) The veteran has a service-connected disability of 20 percent or more which is, or but for the receipt of retired pay would be, compensable under 38 U.S.C. chapter 11, and which was incurred or aggravated in service on or after September 16, 1940; or

(2) A serviceperson is hospitalized for a service-connected disability in a hospital over which the Secretary concerned has charge pending discharge or release from active military, naval or air service and is suffering from a disability which will likely be compensable at a rate of 20 percent or more under 38 U.S.C. Chapter 11; or

(3) A veteran or serviceperson, as described in paragraphs (a)(1) and (2) of this section, has a service-connected disability which is compensable or is likely to be compensable at less than 20 percent, if the individual filed an original application for Chapter 31 before November 1, 1990.

(b) *Employment handicap.* The veteran or serviceperson is determined to be in need of rehabilitation to overcome an employment handicap.

(Authority: 38 U.S.C. 3102, Pub. L. 101-508)

[56 FR 15836, Apr. 18, 1991]

PERIODS OF ELIGIBILITY

§ 21.41 Basic period of eligibility.

A veteran having basic entitlement may be provided a program of rehabilitative services during the twelve-year

period following discharge. The beginning date of the twelve-year period is the day of the veteran's discharge or release from his or her last period of active military, naval, or air service and the ending date is twelve years from the discharge or release date, unless the beginning date is deferred or the ending date is deferred or extended as provided in §§ 21.42, 21.44, and 21.45.

(Authority: 38 U.S.C. 3103)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

§ 21.42 Basic period of eligibility deferred.

The basic twelve-year period of eligibility does not begin to run if the veteran was prevented from beginning or continuing a vocational rehabilitation program for one of the following reasons:

(a) *Qualifying compensable service-connected disability established.* The basic twelve-year period shall not begin to run until the veteran establishes the existence of a compensable service-connected disability described in § 21.40(a). When the veteran establishes the existence of a compensable service-connected disability described in § 21.40(a), the basic twelve-year period begins on the day the Department of Veterans Affairs notifies the veteran of this. The ending date is twelve years from the beginning date.

(Authority: 38 U.S.C. 3103(b)(3), Pub. L. 101-508)

(b) *Character of discharge.* (1) The basic twelve-year period of eligibility shall not begin to run during any period when the veteran had not met the requirement of a discharge or release from the active military, naval or air services under conditions other than dishonorable before:

(i) The discharge or release was changed by appropriate authority, or

(ii) The Department of Veterans Affairs determines that the discharge or release was under conditions other than dishonorable.

(2) The basic twelve-year period shall not begin to run during any period in which the veteran's discharge or dismissal was considered a bar to benefits by the Department of Veterans Affairs,

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before this bar is removed by the Department of Veterans Affairs.

(3) When there is a change in the character of discharge or dismissal under paragraph (b) (1) or (2) of this section the beginning date of the basic twelve-year period of eligibility is the effective date of the change. Determination of character of discharge and change in the character of discharge shall be made under the provisions of § 3.12. The ending date is twelve years from the beginning date.

(Authority: 38 U.S.C. 3103(b)(2))

(c) *Medical condition prevents initiation or continuation.* (1) The basic 12-year period of eligibility shall not begin to run or continue to run during any period of 30 days or more in which the veteran's participation in vocational rehabilitation is infeasible because of the veteran's medical condition, which condition may include the disabling effects of chronic alcoholism, subject to paragraph (c)(5) of this section. The 12-year period shall begin or resume when it is feasible for the veteran to participate in a vocational rehabilitation program, as that term is defined in § 21.35.

(2) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's rehabilitation program.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of *disabling effects of chronic alcoholism*.

(4) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(5) The disabling effects of chronic alcoholism, which prevent initiation or

continuation of participation in a vocational rehabilitation program after November 17, 1988, shall not be considered to be the result of willful misconduct.

(Authority: 38 U.S.C. 3103(b)(1), Pub. L. 100-689)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 55 FR 40171, Oct. 2, 1990; 56 FR 15836, Apr. 18, 1991]

§ 21.44 Extension beyond basic period of eligibility because of serious employment handicap.

The basic period of eligibility of a veteran with a serious employment handicap may be extended when the veteran's employment and particular handicap necessitate an extension as necessary to pursue a vocational rehabilitation program under the following conditions:

(a) *Not rehabilitated to the point of employability.* The basic period of eligibility may be extended when the veteran has not previously been rehabilitated to the point of employability.

(Authority: 38 U.S.C. 3103(c))

(b) *Rehabilitated to the point of employability.* The veteran was previously declared rehabilitated to the point of employability, under the Department of Veterans Affairs vocational rehabilitation program, but either:

(1) The veteran's service-connected disability or disabilities have worsened to the extent that he or she is unable to perform the duties of the occupation in which he or she is trained, or in a related occupation; or

(2) The occupation in which the veteran was rehabilitated to the point of employability is not presently suitable in view of the veteran's current employment handicap and capabilities. (The finding of unsuitability must be based upon objective evidence developed in the course of reconsideration which shows that the nature or extent of the veteran's employment handicap and his or her capabilities are significantly different than were previously found.) or;

(3) Occupational requirements have changed and additional services are needed to help the veteran continue in